

§ 564.55

military personnel or civilian employees of the National Guard or Air National Guard in the scope of employment, and claims arising under a contract, executed incident to camps of instruction, even though legally enforceable under the express terms of the contract and no other, are payable under §§ 564.51 to 564.58.

§ 564.55 Claims not payable.

(a) *Contributory negligence.* Negligence or wrongful act of the claimant or of his agent or employee, a proximate cause of the accident or incident, bars a claim. The law of the place where the accident or incident occurred will be followed in determining whether contributory negligence is present but the doctrine of comparative negligence will not be applied.

(b) *Personal injury.* Claims for personal injury are not cognizable under the act of §§ 564.51 to 564.58.

(c) *Use and occupancy.* Claims for use and occupancy, payment of which is governed by the terms of a lease or contract, are not cognizable under §§ 564.51 to 564.58.

§ 564.56 Action by claimant.

(a) *Who may present a claim.* A claim for damage to or loss of private property may be presented by the owner, or his agent or legal representative. The word "owner", as so used, includes bailees, lessees, mortgagors, conditional vendors, and subrogees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. If filed by an agent or legal representative, the claim should be filed in the name of the owner, signed by such agent or legal representative, showing the title or capacity of the person signing, and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary. If filed by a corporation the claim should show the title or capacity of the officer signing it and be accompanied by evidence of his authority to act. In case of the death of the proper claimant, if it appears that no legal representative has been or will be appointed, the claim may be presented by any person who, by reason of the family relationship, has in fact in-

curred the expense for which the claim is made.

(b) *Form of claim.* A claim shall be submitted in the form of a statement signed by the claimant, setting forth his address, and stating briefly all the facts and circumstances relating to the damage for which compensation is claimed, including a description of the property, evidence of its value, the nature and extent of the damage, the date and place such damage was incurred, the agency by which it was caused, if known, and the amount. Standard Form 95 (Claim for Damage or Injury), appropriately modified by deleting references to "injury" and "personal injury," may be used for this purpose. The claim and all papers accompanying it which are signed by the claimant should bear like signatures.

(c) *Time within which claim must be presented.* A claim cognizable under §§ 564.51 to 564.58 must be submitted within two years of the date of occurrence of the accident or incident.

(d) *Place of filing.* A claim cognizable under §§ 564.51 to 564.58 must be presented in writing to the adjutant general, or his duly authorized representative, of the State, Territory, Commonwealth, or District of Columbia, having jurisdiction over the personnel or unit involved in the accident or incident out of which the claim arose, or to the office of the Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

(e) *Evidence to be submitted by claimant—(1) General.* A claim for damage to or loss of private property must be specific and substantiated by evidence of the damage or loss. A mere statement that such property was damaged or lost and that a certain amount is a fair compensation therefor is not sufficient to support a claim.

(2) *Motor vehicles, buildings, fences, and other structures.* The claimant must submit, if repairs or replacement has been effected, itemized bills therefor, signed and certified as just and correct by the repairman or suppliers, together with evidence of payment thereof, if made; if repairs or replacement has not been effected, an estimate of the cost thereof signed by a person competent to effect such repairs or replacement.

Department of the Army, DoD

§ 564.58

(3) *Crops, trees, land, and other realty.* The claimant must submit an itemized signed estimate of the cost of repairs or restoration of the property, supported by evidence of the number of acres of land, crops, or trees involved, the normal yield per acre and the market value of the property per unit of measure common to the property damaged, or the estimated length of time the land will be unfit for grazing, the normal rental value per acre of similar land in the vicinity, and such other information as may be necessary.

(4) *Contracts.* A copy of the contract, or competent evidence of the provisions thereof, will be furnished by the claimant in support of a claim cognizable under § 564.54.

(5) *Additional evidence.* The claims officer, the interested State adjutant general, or the Chief National Guard Bureau, may require the claimant to submit such additional evidences as he deems necessary to substantiate the claim, including, without limiting the generality of the foregoing, estimates of cost, of repairs from repairman other than those whose estimates the claimant has submitted with the claim and evidence of ownership of or interest in the property.

§ 564.57 Procedure.

Responsibility for the investigation of claims cognizable under §§ 564.51 to 564.68 and of accidents or incidents which may give rise to such claims rests in the adjutants general of the several States. Accordingly, claims received by the National Guard Bureau, or other agencies of the United States, will be referred to the adjutants general of the interested States. Regulations promulgated by the State adjutants general should require the prompt investigation of all accidents or incidents which might result in claims cognizable hereunder, whether or not claims have been filed.

§ 564.58 Determination of amount allowable.

(a) The maximum amount which may be allowed is the value of the property

immediately prior to the accident or incident. Subject to the foregoing, the amount allowable is the cost, incurred or estimated to be incurred, of replacing the property, or of restoring it to the condition in which it was immediately prior to the accident or incident. However, if as the result of the repairs effected, the value of the property is appreciably enhanced, a sum equal to the increase in value will be deducted from the cost of restoring the property in determining the amount allowed. Conversely, if after the repairs have been effected, the value of the property is appreciably less than that prior to the accident or incident, the difference in value will be added to the cost of repairs in determining the amount allowed. However, no award in excess of the amount claimed may be made.

(b) In determining the amount allowable for repairs, the permanency of parts replaced will be considered and deductions made for depreciation as appropriated. Thus, an automobile tire is not expected to last through the life of a vehicle so that when a tire three-fourths worn is replaced with a new tire, the amount allowable is one-fourth of the cost of the new tire. The same principle applies to batteries and other items of equipment or accessories during relatively short wearout periods. However, no allowance for depreciation is made in replacing parts, such as fenders, bumpers, radiators, which normally would last through the life of the vehicle.

(c) Deprivation of use of property (including motor vehicles) is allowable as an item of damages, but only in those cases where the claimant has sustained legally provable damages. Towing charges are also allowable items of damage. However, interest, cost of preparation of claim and of securing supporting evidence, inconvenience, and similar items are not property allowable items of damage.